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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 ANDRUE LEE JEFFERSON,
9 *Petitioner,*

3:19-cv-00084-RCJ-WGC

10 vs.

ORDER

11 PERRY RUSSELL, *et al.*,

12 *Respondents.*

14 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's
15 application (ECF No. 1) to proceed in forma pauperis and for initial review.

16 Petitioner has not properly commenced the action by submitting a pauper
17 application with all required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule
18 LSR1-2, a petitioner must attach both a properly executed financial certificate and an
19 inmate account statement for the past six months. Petitioner attached neither.

20 It does not appear that a dismissal of the current improperly-commenced action
21 without prejudice would materially impact the analysis of the application of the limitation
22 period in a seasonably filed new action or otherwise cause substantial prejudice.¹

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24 ¹ The Court takes judicial notice of the online docket records of the state district court and state
25 appellate courts. *E.g., Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012). Petitioner's
26 conviction was affirmed on direct appeal on February 27, 2014, in No. 62508 in the state supreme court,
27 with the remittitur issuing on March 24, 2014. The time to file a *certiorari* petition expired on May 28, 2014.
28 After approximately 279 days had elapsed, on or about March 4, 2015, petitioner filed a timely state post-
conviction petition. The appeal from the denial of that petition still is pending in No. 75344 in the state
appellate courts. The federal limitation period will not start running again until after the issuance of the
remittitur following the conclusion of the current state appellate proceedings. Petitioner at all times remains
responsible for calculating all applicable limitation periods and timely presenting his claims. The Court
expresses no opinion as to whether a federal petition filed prior to the completion of the current state
appellate proceedings would be subject in full or in part to a defense of failure to exhaust.

1 IT THEREFORE IS ORDERED that the application (ECF No. 1) to proceed in
2 forma pauperis is DENIED and that this action shall be DISMISSED without prejudice.

3 IT FURTHER IS ORDERED that a certificate of appealability is DENIED. Jurists
4 of reason would not find the dismissal of this improperly-commenced action without
5 prejudice to be debatable or wrong, for the reasons discussed herein.

6 The Clerk of Court shall first confirm that petitioner's inmate number is correct on
7 the docket sheet prior to generating mail notice² and thereafter shall send petitioner a
8 copy of his papers in this action, along with copies of the forms and instructions for an
9 inmate pauper application and habeas petition.

10 The Clerk shall enter final judgment accordingly, dismissing this action without
11 prejudice.

12 DATED: This 18th day of April, 2019.

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15 ROBERT C. JONES
16 United States District Judge
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28 ² It appears that his correct inmate number is 1098411 rather than 109411.